



## TERMS OF SERVICE

**GOPHONE TERMS OF SERVICE** "Cingular" or "we," "us" or "our" refers to Cingular Wireless LLC, acting on behalf of its FCC-licensed affiliates doing business as Cingular Wireless. "You" or "your" refers to the person or entity that is the customer of record. These GoPhone Terms of Service are an agreement between Cingular and you ("Agreement"). PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. **PLEASE NOTE** This Agreement requires the use of arbitration to resolve disputes and otherwise limits the remedies available to you in the event of a dispute.

**CHARGES** You are responsible for paying all charges for or resulting from services provided under this Agreement. Charges may include, without limitation airtime, roamer, recurring monthly service, activation, administrative, returned-check and late payment charges, network and other surcharges, optional feature charges, toll, collect call and directory assistance charges, any other charges or calls charged to your phone number, and applicable taxes, surcharges and governmental fees, whether assessed directly upon you or upon Cingular. Cingular may add its own charges to those charged by third parties. Payment for all charges is made in advance and there is no proration of such charges. You agree to pay for incoming and outgoing calls to and from your phone. AIRTIME AND OTHER MEASURED VOICE USAGE ("CHARGEABLE TIME") IS BILLED IN FULL-MINUTE INCREMENTS AND IS ROUNDED UP TO THE NEXT FULL-MINUTE INCREMENT AT THE END OF EACH CALL FOR CHARGING PURPOSES. CINGULAR CHARGES A FULL MINUTE OF AIRTIME USAGE FOR EVERY FRACTION OF THE LAST MINUTE OF AIRTIME USED ON EACH WIRELESS CALL. DATA TRANSPORT IS BILLED IN FULL-KILOBYTE INCREMENTS.

Customer Service

Terms of Service

AND ACTUAL TRANSPORT IS ROUNDED UP TO THE NEXT FULL-KILOBYTE INCREMENT AT THE END OF EACH DATA SESSION FOR CHARGING PURPOSES CINGULAR CHARGES A FULL KILOBYTE OF DATA TRANSPORT FOR EVERY FRACTION OF THE LAST KILOBYTE OF DATA TRANSPORT USED ON EACH DATA SESSION NETWORK OVERHEAD, SOFTWARE UPDATE REQUESTS, AND RE-SEND REQUESTS CAUSED BY NETWORK ERRORS CAN INCREASE MEASURED KILOBYTES If you select a rate plan or additional features that include a predetermined allotment of services (for example, a predetermined amount of airtime, megabytes or text messages), unless otherwise specifically provided as part of such rate plan, any unused allotment of services from one monthly period will not carry over to the next monthly period Additional charges may apply for detailed information about your usage of services Charges for usage of services on networks maintained by other carriers may be delayed Chargeable Time begins for outgoing calls when you press SEND (or similar key) and for incoming calls when a signal connection from the caller is established with our facilities Chargeable Time ends after you press END (or similar key), but not until your wireless telephone's signal of call disconnect is received by our facilities and the call disconnect signal has been confirmed All outgoing calls for which we receive answer supervision or which have at least 30 seconds of Chargeable Time, including ring time, shall incur a minimum of one-minute airtime charge Answer supervision is generally received when a call is answered, however, answer supervision may also be generated by voicemail systems, private branch exchanges, and interexchange switching equipment Chargeable Time may include time for us to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time, however, there will be no charged time for unanswered incoming calls Chargeable Time

may also occur from other uses of our facilities, including by way of example, voicemail deposits and retrievals, and call transfers

If your wireless phone or other device ("Equipment") is lost or stolen, you will be responsible for all charges incurred on your phone number until you report the theft or loss and provide a police report number to us

After you report the theft or loss to us, you remain responsible for complying with your other obligations under this Agreement including, but not limited to, payment of any monthly service fees

**DISPUTES** WITHIN 100 DAYS OF THE DATE OF ANY EVENT GIVING RISE TO A DISPUTE, YOU MUST NOTIFY US IN WRITING AT CINGULAR WIRELESS, BILL DISPUTE, SUITE 1400, 5565 GLENRIDGE CONNECTOR, PO BOX 16, ATLANTA, GA 30342 ("CINGULAR'S ADDRESS") OF SUCH DISPUTE, INCLUDING A DISPUTE OVER ANY CHARGES AND ANY SERVICE WE PROVIDED, OR YOU WILL HAVE WAIVED YOUR RIGHT TO DISPUTE THE CHARGE OR SUCH SERVICES AND TO BRING, OR PARTICIPATE IN, ANY LEGAL ACTION RAISING ANY SUCH DISPUTE

**DISHONORED CHECKS AND OTHER INSTRUMENTS** We will charge you the lesser of \$30.00 or the highest amount allowed by law, whichever is less, for any check or other instrument tendered by you and returned unpaid by a financial institution (including any credit card chargebacks) for any reason You agree to reimburse us the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees, we incur in such collection efforts

**CHANGES TO TERMS AND RATES** We may change any terms, conditions, rates, fees, expenses, or charges regarding your service at any time. We will provide you with notice of such changes (other than changes to governmental fees, proportional charges for governmental mandates, roamer rates or administrative charges) by such means as CINGULAR determines to be most practicable, including playing a recorded message when you attempt to place a call or attempt to add funds to your account, sending written notice to the address provided at the time of activation, sending an SMS message to your phone, or by such other means as Cingular may determine. You understand and agree that State and Federal Universal Service Fees and other governmentally imposed fees, whether or not assessed directly upon you, may be increased based upon the government's or our calculations. **IF WE INCREASE THE PRICE OF ANY OF THE SERVICES TO WHICH YOU SUBSCRIBE, AS SUCH PRICES ARE SET FORTH IN YOUR RATE PLAN BROCHURE, OR IF WE MATERIALLY DECREASE THE GEOGRAPHICAL AREA IN WHICH YOUR AIRTIME RATE APPLIES (OTHER THAN A TEMPORARY DECREASE FOR REPAIRS OR MAINTENANCE), WE WILL DISCLOSE THE CHANGE IN ADVANCE.** If you lose your eligibility for a particular rate plan, we may change your rate plan to one for which you qualify.

**EQUIPMENT** Your Equipment must be compatible with, and not interfere with, our service, and must comply with all applicable laws, rules and regulations. We may periodically program your Equipment remotely with system settings for roaming service and other features that cannot be changed manually. Roaming service is the use of your Equipment outside our service area. Equipment purchased from Cingular or its authorized dealers is sold exclusively for use with Cingular service. It may not function on other networks. By purchasing this Equipment, you agree to activate it on Cingular service.

**TERMINATION** Either party may terminate this Agreement at any time on advance notice to the other party. Cingular may terminate this Agreement at any time without notice if we cease to provide service in your area. We may interrupt or terminate your service without notice for any conduct that we believe violates this Agreement or any terms and conditions of your rate plan, or if you behave in an abusive, derogatory or similarly unreasonable manner with any of our representatives, or if you fail to make all required payments when due or if we have reasonable cause to believe that your Equipment is being used for an unlawful purpose or in a way that may adversely affect our service. If you have more than one account with us, you must keep all accounts in good standing to maintain service. If one account is past due or over its limit, all accounts in your name are subject to interruption or termination and all other available collection remedies.

**SERVICE LIMITATIONS, LIMITATION OF LIABILITY** Service may be interrupted, delayed or otherwise limited for a variety of reasons, including environmental conditions, unavailability of radio frequency channels, system capacity, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, equipment modifications and repairs, and problems with the facilities of interconnecting carriers. We may block access to certain categories of numbers (e.g. 976, 900 and international destinations) or certain websites in our sole discretion. We may, but do not have the obligation to, refuse to transmit any information through the service and may screen and delete information prior to delivery of that information to you. **There are gaps in service within the service areas shown on coverage maps, which, by their nature, are only approximations of actual**

coverage WE DO NOT GUARANTEE YOU UNINTERRUPTED SERVICE OR COVERAGE WE CANNOT ASSURE YOU THAT IF YOU PLACE A 911 CALL YOU WILL BE FOUND Airtime and other service charges apply to all calls, including involuntarily terminated calls CINGULAR MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, OR PERFORMANCE REGARDING ANY SERVICES OR GOODS, AND IN NO EVENT SHALL CINGULAR BE LIABLE, WHETHER OR NOT DUE TO ITS OWN NEGLIGENCE, for any (a) act or omission of a third party, (b) mistakes, omissions, interruptions, errors, failures to transmit, delays or defects in the service provided by or through us, (c) damage or injury caused by the use of service or Equipment, including use in a vehicle, (d) claim against you by third parties, (e) damage or injury caused by a suspension or termination of service by Cingular, or (f) damage or injury caused by failure or delay in connecting a call to 911 or any other emergency service Notwithstanding the foregoing, if your service is interrupted for 24 or more continuous hours by a cause within our control, we will issue you, upon request, either a credit equal to a pro-rata adjustment of any recurring charge (if applicable) for the time period your service was unavailable, not to exceed the charges collected for the period of interruption, or an extension of the expiration period Our liability to you for service failures is limited solely to the credit set forth above Unless applicable law precludes parties from contracting to so limit liability, and provided such law does not discriminate against arbitration clauses, Cingular shall not be liable for any indirect, special, punitive, incidental or consequential losses or damages you or any third party may suffer by use of, or inability to use, service or Equipment provided by or through Cingular, including loss of business or goodwill, revenue or profits, or claims of personal injuries

To the full extent allowed by law, you hereby release, indemnify, and hold Cingular and its officers, directors, employees and agents harmless from and against any and all claims of any person or entity for damages of any nature arising in any way from or relating to, directly or indirectly, service provided by Cingular or any person's use thereof (including, but not limited to, vehicular damage and personal injury), INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE ALLEGED NEGLIGENCE OF CINGULAR, or any violation by you of this Agreement This obligation shall survive termination of your service with Cingular Cingular is not liable to you for changes in operation, equipment or technology that cause your Equipment or software to be rendered obsolete or require modification SOME STATES, INCLUDING THE STATE OF KANSAS, DO NOT ALLOW DISCLAIMERS OF IMPLIED WARRANTIES OR LIMITS ON REMEDIES FOR BREACH THEREFORE, THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE

**ACCOUNT ACCESS** You authorize us to provide information about and to make changes to your account, including adding new service, upon the direction of any person able to provide information we deem sufficient to identify you An account password will be assigned to you In order to protect the security of your account, you should change this password as soon as possible after your account is activated If you do not change your password, your account may not be secure

**VOICEMAIL SERVICE** We may deactivate your voicemail service if you do not initialize it within a reasonable period after activation We will reactivate the service upon your request

**DISPUTE RESOLUTION BY BINDING ARBITRATION** Please read this carefully. It affects your rights. Summary Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at 800-331-0500. In the unlikely event that Cingular's customer service department is unable to resolve a complaint you may have to your satisfaction (or if Cingular has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Any arbitration under this Agreement will take place on an individual basis, class arbitrations and class actions are not permitted. Cingular will pay all costs of arbitration, no matter who wins, so long as your claim is not frivolous. Moreover, in arbitration you are entitled to recover attorneys' fees from Cingular to at least the same extent as you would be in court. In addition, under certain circumstances (as explained below), Cingular will pay you and your attorney a special premium if the arbitrator awards you an amount that is greater than what Cingular has offered you to settle the dispute. **Arbitration Agreement** (1) Cingular and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to, claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising), claims

that are currently the subject of purported class action litigation in which you are not a member of a certified class, and claims that may arise after the termination of this Agreement. References to "Cingular," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of services or equipment under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. You agree that, by entering into this Agreement, you and Cingular are each waiving the right to a trial by jury or to participate in a class action. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement. (2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Cingular should be addressed to General Counsel, Cingular Wireless LLC, 5565 Glenridge Connector, 20th Floor, Atlanta, GA 30342 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute, and (b) set forth the specific relief sought ("Demand"). If Cingular and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Cingular may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Cingular or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Cingular is entitled. You may download or copy a form Notice and a form to initiate arbitration at [www.cingular.com/arbitration-forms](http://www.cingular.com/arbitration-forms). (3) After Cingular receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse

you for your payment of the filing fee (The filing fee currently is \$125 for claims under \$10,000, but is subject to change by the arbitration provider. If you are unable to pay this fee, Cingular will pay it directly upon receiving a written request at the Notice Address) The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address (You may obtain information, that is designed for non-lawyers, about the arbitration process at [www.cingular.com/arbitration-information](http://www.cingular.com/arbitration-information). All issues are for the arbitrator to decide, including the scope of this arbitration provision, but the arbitrator is bound by the terms of this Agreement. Unless Cingular and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Except as otherwise provided for herein, Cingular will pay all AAA filing, administration and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse Cingular for all monies previously disbursed by it

that are otherwise your obligation to pay under the AAA Rules. (4) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is (a) equal to or less than the greater of \$5,000 OR the maximum claim that may be brought in small claims court in the county of your billing address, AND (b) greater than the value of Cingular's last written settlement offer made before an arbitrator was selected, THEN Cingular will (a) pay you the greater of \$5,000 OR the maximum claim that may be brought in small claims court in the county of your billing address ("the premium") instead of the arbitrator's award, AND (b) pay your attorney, if any, twice the amount of attorneys' fees your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium"). If Cingular did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the premium and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the premium and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits. (5) The right to attorneys' fees and expenses discussed in paragraph (4) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws Cingular may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, Cingular agrees that it will not seek such an award.

(6) The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND CINGULAR AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and Cingular agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific proviso is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. (7) Notwithstanding any provision in this Agreement to the contrary, we agree that if Cingular makes any change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change and require Cingular to adhere to the language in this provision if a dispute between us arises.

**MISCELLANEOUS** This Agreement, any applicable rate summary sheet, the terms included in the rate brochure(s) describing your plan and services, terms of service for products and services not otherwise described in this Agreement or the brochure that are posted on a Cingular website and any documents expressly referred to herein or therein, make up the complete agreement between you and Cingular, and supersede any and all prior agreements and understandings relating to the subject matter of this Agreement. If any provision of this Agreement is found to be unenforceable by a court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause, if that prohibition is found to be unenforceable, the arbitration

clause (but only the arbitration clause) shall be null and void. Cingular may assign this Agreement, but you may not assign this Agreement without our prior written consent. The law of the state of your address of record on your account shall govern this Agreement except to the extent that such law is preempted by or inconsistent with applicable federal law. Your caller identification information (such as your name and phone number) may be displayed on the equipment or bill of the person receiving your call, technical limitations may, in some circumstances, prevent you from blocking the transmission of caller identification information. You consent to the use by us or our authorized agents of regular mail, predictive or autodialing equipment, email, text messaging, facsimile or other reasonable means to contact you to advise you about our services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service related notifications, or other such information. The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version. **Connecticut Customers** Questions About Your Service. If you have any questions or concerns about your service, please call Customer Care at 1-800-331-0500 or dial 611 from your wireless phone. If you are a Connecticut customer and we cannot resolve your issue, you have the option of contacting the Department of Public Utility Control (DPUC). Online [www.state.ct.us/dpuc](http://www.state.ct.us/dpuc), Phone 800-382-4586, Mail Connecticut DPUC, 10 Franklin Square, New Britain, CT 06051.

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